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**REMARKS**

Applicants wish to thank the Examiner for the attention accorded to the instant application. Claims 40-54 and 56-77 are pending.

It is not believed that any fees are due with the response, however, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 501468.

**I. Nonstatutory Double Patenting Rejection**

The Examiner has rejected claims 40-54 and 56-77 under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,259,831.

Applicants will submit a terminal disclaimer shortly. In any event, if the Examiner provides a Final Office Action in response to this amendment, Applicants expect that the submission of a terminal disclaimer should be an allowable After-Final Submission to place the claims in condition for allowance.

**II. Claim Rejections – 35 U.S.C. § 103**

The Examiner has rejected all of the pending claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,256,540 to Jin et al. ("Jin") or U.S. Patent No. 6,091,867 to Young et al. ("Young").

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The Examiner states that all of the pending claims are clearly anticipated by Figure 7 of Jin or Figure 10 of Young. The Examiner argues that both references disclose all of the claimed structures except for a solid state switching element. The Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the solid state switching elements in either Jin or Young based on its suitability for the intended use.

Claims 40 and 77 have been amended to more particularly point out and distinctly claim the subject matter which is regarded as the invention. In particular, claim 40 has been amended to recite that the optical switching elements of the present invention are "capable of causing switching between polarization states of said electromagnetic signals." Claim 77 has been amended to recite that the step of selectively actuating the optical switching elements is performed by "switching the polarization states of said electromagnetic signals." Applicants submit that the amendments to the claims have made the claims allowable over the cited prior art. The present invention features a novel combination of a polarizer and a phase shifter which is electrically controllable to control the phase shift. Importantly, there is no moving mechanical mechanism to control the interconnection between the inputs and outputs.

In contrast, Jin discloses an optical crossconnect system featuring a light-reflecting mirror which is controlled by a magnet assembly. By necessity, the mirror is moved mechanically to interact with the optical signal paths through the device. There is no

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teaching or suggestion in Jin to control the routing of the optical signals through a phase shift and polarization.

Similarly, Young discloses an optical switching system which uses optical output ports at spaced apart locations. A closer look at Figure 10 (cited by the Examiner in the instant Office Action) shows that the output ports of Young's switching system are at varying path lengths from the input ports. That is, each pathlength from unique input ports and unique output ports is different. This can cause varying attenuation and non-constant latency, two problems which Applicants have recited in the Specification (page 12). Claim 40 of the present application particularly recites the limitation that the "all-optical signal paths has substantially the same pathlength." Claim 77 similarly recites the limitation that "all-optical signal paths has substantially the same pathlength."

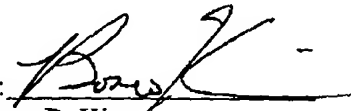
Applicants respectfully request withdrawal and reconsideration of the claim rejections in light of the preceding amendment and remarks.

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**III. Conclusion**

Accordingly, Applicants believes that all of the independent claims, 40 and 77, are now in a condition for allowance. The dependent claims, which all depend from the amended independent claims, are similarly now in a condition for allowance. Early notice to that effect is earnestly solicited.

Respectfully submitted,

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